

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4832 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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BIPINCHANDRA PARSHOTTAMDAS PATEL (VAKIL)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4832 of 2001

MR ND NANAVATI WITH MR GM JOSHI for Petitioner No. 1

VM PANCHOLI GOVT PLEADER for Respondent No. 1-3

RULE SERVED BY DS for Respondent No. 4

MR RM CHHAYA for Respondent No. 5

MR HAROOBHAI MEHTA WITH KS JHAVERI for Respondent No. 6

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision/ /08/2001

CAV JUDGEMENT

1. The petitioner Bipinchandra Parshottamdas Patel (Vakil) is an elected Councillor of the Anand Municipality, and also elected as President of the said Municipality. The petitioner by way of present petition under Article 226 of the Constitution seeks to challenge the order passed by Director of Municipalities on 21-6-2001 in exercise of his powers under section 40 of the Gujarat Municipalities Act, whereby the petitioner was placed under suspension. The petitioner preferred an appeal challenging the impugned order dated 21-6-2001, which has been registered as Appeal No. 30 of 2001 before the Appellate Authority in the State Government. It is alleged that, the appellate authority without considering the contentions raised by the petitioner in

appeal, by an order dated 30-6-2001 dismissed the appeal, and confirmed the order passed by the Director of Municipalities. In the present petition petitioner prays for quashing of aforesaid two orders.

2. It is alleged that the Respondent No. 6 was President of Anand Municipality for long time and he was making all efforts somehow to overthrow the petitioner not only from the post of President but also tried to win over some councillors with a view to capture Anand Municipality. The respondent No. 6 also filed Special Civil Application No. 802 of 2001 making certain allegations against present petitioner, but have failed to get support from other councillors and hence he withdrew the petition. It is alleged that, at the instance of respondent No.6, two cases have been filed against the petitioner for which he was detained in jail custody from 13-6-2001 to 6-7-2001 and his bail was granted on 7-7-2001. Because of the detention of the petitioner in jail in connection with Anand Police Station Case being C.R. NO. 257 of 201 and C.R. No. 254 of 2001 for offence under section 307, 143, 147, 148, 149, of I.P. Code read with section 25 (C) of the Arms Act and under section 135 of the Bombay Police Act, the Director of Municipalities suspended the petitioner from office of President of Anand Municipality by an order dated 21-6-2001. Having felt aggrieved by the order of the Director of Municipalities dated 21-6-2001, petitioner filed an appeal, which also came to be dismissed by the appellate authority in State Government. Having felt aggrieved by the aforesaid two orders the petitioner has filed the present petition.

3. The Respondent No. 3 has filed reply affidavit in which he has denied all the allegations made by the Petitioner. It is submitted that the Collector of Anand District by his letter/report dated 11-6-2001 and 13-6-2001 mentioned that two complaints have been filed in Anand Town Police Station being C.R. No. 257 of 2001 and C.R. No. 254 of 2001 for commission of offence under section 307, 143, 147, 148, 149 of I.P. Code read with section 25 (C) of the Arms Act, and under section 135 of the Bombay Police Act. It is stated that the respondent no.3 has considered reports of the Collector and has found that the petitioner was involved in a serious offence and he has been detained in judicial custody. Consequently respondent No.3 after being satisfied, suspended the petitioner from office of President by his order dated 21-6-2001. It is submitted in the counter affidavit that the Respondent No.3 did not pass the order on any political ground but he has taken

the decision after considering reports of the Collector.

4. Mr. N.D. Nanavati, learned senior counsel appearing on behalf of the petitioner submitted that President and Vice President of a Municipality can be suspended if he is detained during trial of a criminal offence. It is further submitted that the legislature thought it fit to wait for framing of charge before taking harsh action of placing the peoples' representative under suspension. It is submitted by Mr. Nanavati that the order passed by Respondent No.3 as well as the State Government are illegal, unauthorised, ultra vires and violative of Article 21 of the Constitution. Mr. Nanavati also submitted that the petitioner is President of Anand Municipality and is holding a constitutional post. It is submitted that Section 40 (1) of the Gujarat Municipalities Act envisages only two situations on which the powers can be exercised. The action of suspension on the President or Vice President being penal in nature, it requires to be applied very strictly and with utmost caution. It is submitted that the authorities have committed an error in enlarging scope of Section 40 and to place the petitioner under suspension even before the trial commenced. Mr. Nanavati further submitted that the appellate authority did not decide the question raised in the appeal. It is submitted that the question that requires a decision in the present case is, whether the petitioner was detained in prison during the trial. It is submitted that the State Government erroneously upheld the decision of the Director of Municipalities for coming to a wrong conclusion that the suspension was made during judicial proceeding. It is also submitted that the appellate authority mixed up the word "trial" with "judicial/criminal proceedings" , and has thereby committed serious error of law, which goes to the root of the matter. It is, therefore, submitted that, it is an admitted fact that the chargesheet has not yet been filed and no trial has begun and the petitioner was taken in custody and detained in jail during the period of investigation. Since the petitioner was detained in jail during investigation of the criminal case, he cannot be suspended from his office and therefore the order is non-est and liable to be quashed.

5. Mr. Nanavati further argued that under section 40 (1) of the Gujarat Municipalities Act, President or Vice President may be suspended from office on two situation. Firstly, against whom a criminal proceeding in respect of any offence is alleged to have been committed by him, under Prevention of Corruption Act 1947

or Bombay Prohibition Act, 1949 or by acting or purporting to act in the discharge of his duties under this Act have been instituted. Secondly, when the President or Vice President has been detained in prison during trial under the provisions of any act for the time being in force. Mr. Nanavati accordingly submitted that the first condition did not apply in the present case against the petitioner and the petitioner has been suspended under the second condition of section 40 (1) of the said Act. Mr. Nanavati submitted that, for fulfillment of the second condition of section 40 (1) the President or Vice President must be detained in prison during trial. Mr. Nanavati has given special stress on the word " during trial ". It is submitted by Mr. Nanavati that, criminal trials are held under the provisions of the Code of Criminal Procedure 1974. On the said Code the word 'trial' has not been defined, but the word 'inquiry' has been defined under section 2 (g), which provides inter alia that the inquiry means an inquiry other than trial conducted under this Code by a Magistrate or a Court. Mr. Nanavati submitted that the investigation is also an inquiry which excludes the period of trial. Mr. Nanavati also submitted that different types of trials are conducted by the Magistrate or the Court in summons case, warrant case or in a sessions case. It is also submitted that in whatever manner the trial is held, the trial begins after the charge is framed against an accused person and if he claims not guilty to the charge, then the trial shall begun. Mr. Nanavati further submitted that the word 'during trial' has been defined in BLACK'S LAW DICTIONARY. According to Black's Law Dictionary the meaning of the word during trial is " a period beginning with swearing of jury and ending with rendition of verdict. Period commencing with presentation of indictment by grand jury to court and terminating with final judgment." Mr. Nanavati accordingly submitted that, after the FIR is filed to the police or complaint is made to the Magistrate, either an investigation or an inquiry is started. During period of investigation the police collects evidence and if the police is satisfied that the commission of crime by an accused is established, then the chargesheet is filed before the Court and after chargesheet is filed, the Magistrate or the Court takes cognizance of the offence and frames charge against the accused. And, if the accused denies the charge then the trial begins. Mr. Nanavati accordingly submitted that, after filing of the complaint to the police or Magistrate and till the trial begins the period is either called as inquiry or investigation and this period cannot be said to be a period of trial of an

accused. Mr. Nanavati consequently submitted that the legislature while passing section 40 (1) of the Gujarat Municipalities Act kept in view that the democratically elected persons in the local bodies should not be suspended even if there is detention during investigation or inquiry. Mr. Nanavati also submitted that the legislature has kept in view that there may be false allegation against political persons and they may also be detained in jail during investigation or inquiry on such false allegation and if suspension is followed during investigation or inquiry then it would be impossible for the democratically elected local bodies to function properly. Keeping in view this peculiar situation it is intended by the legislature that the President or Vice President of a local body can only be suspended if he is detained during trial and not during period of investigation or inquiry. It is also submitted by Mr. Nanavati that the police has not yet submitted chargesheet in those two cases filed against the petitioner and he was detained in jail for some days during investigation period. Mr. Nanavati consequently submitted that, since the petitioner was not detained during trial the Director of Municipalities as well as the appellate authority in State Government has committed an error in suspending the petitioner from the office of President of Anand Nagarpalika.

6. Mr. Haroobhai Mehta, learned senior counsel appearing on behalf of respondent No. 6 submitted that the word " during trial " should not be interpreted in a narrow compass and it should not be literally interpreted but a purposeful interpretation is required. It is submitted by Mr. Mehta that, for applying section 40 (1) of the Gujarat Municipalities Act two conditions are to be fulfilled. According to the first condition, the President or Vice President should be suspended from office when a criminal offence alleged to have been committed by him either under Corruption Act or under Bombay Prohibition Act 1947, or acted or purported to have been acted in discharging his duty. Mr. Mehta submitted that, in case of the first condition the institution of a criminal prosecution is sufficient for suspending a President or Vice President of the Municipality. According to the second condition the President or Vice President may be suspended from office if he is detained in prison during trial under the provisions of any law for the time being in force. Mr. Mehta submitted that the word 'during trial' shall mean, during the course of the trial and the entire course of trial will include the period of investigation. The only condition that is to be satisfied is detention.

According to Mr. Mehta, in case of other laws a President or Vice President must be detained in prison. If any criminal proceeding is instituted under any other law for the time being in force, that is excluding the acts mentioned in the first part of section 40 (1). Mr. Mehta also submitted that the term 'trial' means 'adjudication' and during investigation the Magistrate or the Court is called upon to decide the bail application or other applications of an accused and the decision given by the Judge or Magistrate is a decision during the course of trial. It is also submitted by Mr. Mehta that, if the intention of the legislature is to suspend a President or Vice President if detained in prison during trial, then in almost all cases of criminal offence no President or Vice President can be suspended. It is submitted by Mr. Mehta that, even in case of heinous and serious offences the accused persons are detained in jail during the period of investigation and most of them are released during the period of trial. Accordingly, Mr. Mehta submitted that, it cannot be the intention of the legislature to keep an elected President or Vice President in his office while he has been detained in jail on the ground that a criminal offence alleged to have been committed by him. It is submitted that the Magistrate or the Court after being prima facie satisfied about the involvement of the accused in the commission of the offence refuses bail and remand the accused to either police or judicial custody. It is also submitted by Mr. Mehta that the holder of the post of President or Vice President if detained in prison during investigation he has no moral or legal right to continue in such office and therefore the word 'detention during trial' should not be interpreted in a narrow compass, and the words 'during trial' should include the period after filing FIR with the police about the commission of a criminal offence till the end of trial, and the detention in jail at any time during this entire period will attract second part of Section 40 (1) of the Act.

7. Mr. V.M. Pancholi, learned AGP appearing on behalf of State Respondents submitted that the Director of Municipalities has been empowered by the State Government to pass the order of suspension of the petitioner after being satisfied about involvement of the accused of about six offences and also considering his detention in prison. While the order was passed on 21-6-2001 the petitioner was under detention in prison. Even when the State Government decided the appeal on 30-6-2001 the petitioner was under detention in prison. Mr. Pancholi accordingly submitted that the Director of Municipalities after being satisfied has passed the order

of suspension and the State Government have also upheld the order of the Director of Municipalities as the petitioner has been detained during judicial proceeding in connection with the commission of offences under the provisions of I.P. Code read with Arms Act and other offences. Mr. Pancholi accordingly submitted that no illegality has been committed by the Director of Municipalities or the State Government, and therefore, no interference is called for with the appellate order passed by the State Government.

8. I have heard learned counsel of all the parties. Before discussing rival contentions of the parties, it is necessary to reproduce Section 40 of the Gujarat Municipalities Act, 1963, which reads as follows :-

" 40. Suspension of president or vice-president(1) The State Government or any officer authorised by it, may suspend from office a president or vice president against whom any criminal proceedings in respect of any offence alleged to have been committed by him under the Prevention of Corruption Act, 1947, (2 of 1947) or the Bombay Prohibition Act, 1949, (Bom XXV of 1949) or while acting or purporting to act in the discharge of his duties under this Act have been instituted or who has been detained in a prison during trial under the provisions of any law for the time being in force.

(2) Should a president or vice-president be suspended under sub section (1), a councillor shall be elected to perform all the duties and exercise all the powers of a president or, as the case may be, vice-president during the period for which such suspension continues.

(3) An appeal shall lie to the State Government against an order passed by the authorised officer under sub-section (1). Such appeal shall be made within a period of thirty days from the date of the order. "

On a plain reading of the provisions of section 40, it appears that the power to be exercised by the State Government or by any officer authorised by it is a discretionary power. The President or Vice President of a Municipality may be suspended in case of any criminal proceedings in respect of an offence alleged to have been

committed by him under Prevention of Corruption Act, 1947 or Bombay Prohibition Act 1949 or while acting or purporting to act in discharge of his duties it is instituted. This is taken as a first condition for suspension. Suspension of a President or Vice President is possible if any criminal offence is alleged to have been committed by them under the said Acts have been instituted. Second part of the section provides that the President or Vice President may be suspended from office who has been detained in prison during trial under the provisions of any law for the time being in force. Admittedly the petitioner has been suspended as per second part of section 40 (1) of the aforesaid Act. According to Mr. Nanavati, the detention must be during the period of trial and detention during investigation or inquiry do not fall within the period of trial and therefore any detention during period of inquiry or investigation cannot be said to be a detention during trial. According to Mr. Mehta the President or Vice President can be suspended when a criminal proceeding is instituted according to the first part of the section. But in case of any other case suspension is possible only if the President or Vice President is detained in connection with the criminal proceeding under any law for the time being in force other than those Acts mentioned in first part of section 40 (1) of the Act. Mr. Mehta accordingly submitted that according to the first part of section 40 (1) institution of criminal proceeding is sufficient for suspension of President or Vice President, whereas for fulfillment of second part of section 40 (1) a detention in prison is the requirement, and the word 'during trial' should not be considered in a broad sense. There is sufficient force in the submission of learned senior counsel Mr. Mehta. The word 'trial' has been defined in various acts in various terms. If the words 'during trial' is given a literal meaning, then, I am of the view that the object and purpose of the section is bound to be frustrated. If the President or Vice President of a democratically elected local body commits a criminal offence and is detained in jail on the basis of allegation of such commission of offence, I am of the view, if such President or Vice President is permitted to hold the office during detention in jail, this will have an adverse affect on the society. It may be interpreted that the holder of high public office of President or Vice President in a local body are above law and can be allowed to be functioned in their respective office even when they are detained in jail in connection with the alleged commission of a criminal offence.

9. There is another aspect of the matter, that is

regarding the practical difficulty. If a President or Vice Present of a local body is detained in prison then it will not be possible for him to discharge his normal functions as President or Vice President of the local body. From prison he cannot attend the office or attend any meeting of the local body. Therefore it is imperative for the local body to elect a President or Vice President when the regular President or Vice President are not available because of their detention in jail. It appears that, provision in this regard has also been made in sub section (2) of Section 40 of the Gujarat Municipalities Act. The suspension of a President or Vice President is for a temporary period, and the power to suspend such President or vice President is discretionary. In the present case the petitioner was under detention in jail from 13-6-2001 to 6-7-2001, that is for about 23 days. During these 23 days it is not expected that the President could have discharged his functions from prison. Therefore the order of suspension has become imperative which the Director of Municipalities have done for effective function of the local body by electing a new President during the absence of the regular President during his detention in jail. It is true, in the instant case the petitioner-President of the local body was under detention for 23 days. It is also be seen that in serious and gravious nature of cases the pre trial detention may continue even for a longer period. If the detention during pre trial stage is longer, then, it is imperative for the local body to elect a President during absence of the regular President for smooth functioning of the local body. The suspension of the President or Vice President being for a temporary period, the discretionary power is vested in the authority, and such suspension order can be reviewed at any time and may also be revoked by the authority after considering the nature and gravity of offence alleged to have been committed by the President or Vice President.

10. Having regard to the facts and circumstances stated above, and the practical difficulty that may arise in the functioning of the local body, I am of the view that the expression "detention in jail during trial" mentioned in second part of Section 40 (1) of the Gujarat Municipalities Act should not be narrowly construed, and that the expression "detention in jail during trial" should include the detention during pre-trial, trial and post-trial. Having regard to the expectation of the people about the conduct of the holder of public representatives and the practical difficulty that may arise in the functions of the local bodies, I am of the view that the detention in jail during trial as mentioned

in second part of section 40 (1) of the Act should be interpreted as "detention in jail during the process of trial" which period shall include from the date of filing of the F.I.R. till the end of trial, and the detention of the President or Vice President in any time during this period in jail shall attract the second part of section 40 (1) of the Gujarat Municipalities Act, and the authority is competent to take a decision whether such President or Vice President who has been detained in custody in connection with the alleged criminal offence should be suspended or not. The authority while considering the suspension of the President or Vice President during detention should take a decision according to the nature and gravity of the offence alleged to have been committed by such President or Vice President. In the instant case when the suspension order was passed by the Director of Municipalities the petitioner was under detention in jail, and when the State Government disposed of the appeal, then also the petitioner was under detention in jail. Therefore, I am of the view that, no illegality has been committed by the Director of Municipalities or by the State Government in suspending the petitioner from the office of the President of the Municipality. After considering the submission of learned counsel of all the parties, and after going through the provisions of section 40 of the Gujarat Municipalities Act, I am of the view that, there is no merit in the present petition and it is liable to be dismissed.

11. Mr. N.D. Nanavati, learned senior counsel appearing on behalf of the petitioner submitted that the petitioner has already been released on bail on 7-7-2001, and therefore, there is no need to continue the suspension order and accordingly the order of suspension be quashed. I do not like to enter into this controversy at this stage and I leave this to the wisdom of the authority to take a decision regarding revocation of the suspension order, after considering the nature and gravity of the offence alleged to have been committed by the petitioner.

12. The petition is accordingly dismissed. Ad interim relief granted earlier shall stand vacated. Rule discharged. However, I make no order as to costs.

Further Order:

I have heard Mr. G.M. Joshi, learned counsel for the petitioner and Mr. Haroobhai Mehta, learned senior counsel for the respondent No. 6. Mr. Joshi prays for stay of the judgment & order passed by this Court today in Special Civil Application No. 4832 of 2001 for seven days, so as to enable the petitioner to obtain stay order from the Appellate Court. Since the matter involves interpretation of Statute, I am of the view that, the judgment & order passed by this Court today should be stayed for seven days. Accordingly the judgment & order passed by this Court today, i.e. 28-8-2001 in Special Civil Application No. 4832 of 2001 is stayed for seven days. If no stay order is obtained from the Appellate Court by 5-9-2001, then, this order shall stand vacated.

Dt: 28-8-2001

(P.K. Sarkar, J)

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